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In the

SUPREME COURT OF THE UNITED STATES

October Term, 1967

No. 394

ROY SETH HALE,
Petitioner,

v.

TOWN OF VINTON,
Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

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Washington, D. C. · THIEL PRESS · 202 · 393-0625

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PRELIMINARY STATEMENT

By letter of the Honorable John F. Davis, Clerk of the Supreme Court of the United States, dated October 10, 1967, the Town Attorney for the Town of Vinton, Virginia was requested to file a response to the petition for writ of certiorari in the instant case. In accordance with the request contained in the above mentioned communication, the within brief of the respondent in opposition to the petition for writ of certiorari is filed.

PRIOR PROCEEDINGS

Roy Seth Hale, petitioner, was convicted by a jury in the Circuit Court of Roanoke County, Virginia, on November 9, 1966, on a charge of operation of a motor vehicle while under the influence of intoxicants, in violation of § 33 of the Town of Vinton, Virginia Ordinances and his punishment was fixed at a fine of $100.00. A petition for writ of error directed to the Supreme Court of Appeals of Virginia from the judgment of the Trial Court was filed with the Supreme Court of Appeals of Virginia and a brief in opposition to the petition for writ of error was filed in said Court. The Supreme Court of Appeals of Virginia affirmed the judgment of the Trial Court on April 19, 1967.

STATEMENT OF FACTS

The petitioner, Roy Seth Hale, was taken into custody on August 27, 1966 in the Town of Vinton, Virginia by Vinton Town Policeman James M. Greenway. Pursuant to § 18.1-55.1 of the 1950 Code of Virginia as amended, Roy Seth Hale was given an opportunity under the Virginia Implied Consent Law, to have a chemical analysis made of his blood so that the amount of alcohol therein, if any, could be determined. The petitioner submitted to the said analysis and simultaneously was charged with the operation of a motor vehicle while under the influence of intoxicants, in violation of Vinton Ordinance No. 33. Petitioner, Roy Seth Hale, was subsequently tried in the Circuit Court of the County of Roanoke, Virginia, said trial being by jury, and was found guilty of the charge. Said petitioner, Roy Seth Hale, retained counsel on the day he was charged and was represented at every stage in the proceedings by counsel on the charge of driving under the influence of intoxicants.

QUESTIONS PRESENTED

I. Does this case present a matter to be determined in the United States Supreme Court?

II. Was the failure to provide counsel for the petitioner a violation of his constitutional rights?

III. Was petitioner denied access to counsel of his own choosing?

ARGUMENT

I

The petition for writ of certiorari to the Supreme Court of the United States fails to set out a case of proper jurisdiction for this Court's consideration.

The petition for writ of certiorari to the Supreme Court of the United States fails to set out a case of proper jurisdiction for this Court's consideration.

At page 2 of the petitioner's petition for writ of certiorari, petitioner invokes the jurisdiction of this Court under Title 28, United States Code § 1257(3) providing for review by writ of certiorari by this Honorable Court where a right, privilege or immunity specifically set up or claimed under the Constitution of the United States is involved. Petitioner alleges that the constitutional provisions involved in this matter are those contained in Amendment V, Amendment VI and Amendment XIV, Section 1 of the United States Constitution and amendments thereto. Amendment V as quoted by the petitioner is as follows:

AMENDMENT V

> "No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment of indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor

> shall any person be subject to the same offense to be twice put in jeopardy of life or limb, nor be compelled in any criminal case to be a witness against himself, *nor be deprived of life, liberty*, or property, *without due process of law*; nor shall private property be taken for public use, without just compensation." (emphasis by Counsel).

The emphasis supplied by the petitioner is on the following phrase:

> "nor be deprived of life, liberty, or property without due process of law;"

It is respectfully submitted that the Virginia Implied Consent Law, § 18.1-55.1 of the 1950 Code of Virginia as amended (Appendix A-2) does not provide for capital punishment, does not provide a jail sentence, and does not provide that one convicted thereunder will be deprived of any property whatsoever. The punishment under the Virginia Implied Consent Law, § 18.1-55.1 of the 1950 Code of Virginia as amended as stated in paragraph (n) (Appendix A-2) of said Ordinance provides that should a defendant be convicted of a violation thereunder, after a fair trial on the reasonableness of his refusal, he would then have his license to operate a motor vehicle in the State of Virginia suspended for a period of ninety days for a first offense.

In the case of *Walton v. Roanoke*, 204 Va. 678, 133 S.E. 2d 315 in a case dealing with the constitutionality under the Virginia Constitution of the "Virginia Implied Consent Law", § 18.1-55.1 of the 1950 Code of Virginia as amended (Appendix A-2), the Court said "the right to operate a motor vehicle on the highway of this State is not a property or unrestrained right, but a privilege which is subject to reasonable regulation of police power of the State in the interest of public safety and welfare". And further, "he can refuse to submit and his refusal will result at most only in a revocation of his privilege to drive, and then only if the refusal is found, after fair trial, to have been unreasonable".

ARGUMENT

II

Petitioner at page 3 of his petition for writ of certiorari alleges a violation of the rights granted under the Sixth Amendment to the Constitution of the United States and quotes the Sixth Amendment as follows:

AMENDMENT VI

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, *and to have the assistance of counsel for his defense.*" (Emphasis by Counsel.)

As the Court can readily see, the Sixth Amendment deals with "criminal prosecutions". It is respectfully submitted that we do not, here, have a case of criminal prosecution in that the Virginia Implied Consent Law, § 18.1-55.1 of the 1950 Code of Virginia as amended (Appendix A-2) does not constitute a "crime". There is no incarceration provided for conviction thereunder, there is no fine provided for conviction thereunder and there is no confiscation of property provided for conviction thereunder. The Statute merely regulates the issuance and retention of drivers' licenses in the State, and if I may make the observation, the Statute is as much for the protection of the one suspected of driving under the influence as it is for the protection of the public from the results of driving under the influence.

The petitioner contends that his rights granted under Amendment XIV, Section 1, of the United States Constitution have been violated and quotes on page 4 of his petition Amendment XIV, Section 1 as follows:

AMENDMENT XIV

Section 1

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; *nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*" (Emphasis by Counsel).

As stated therein this Amendment provides in the part emphasized by the petitioner "nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

It is respectfully submitted that the petitioner was never in jeopardy of being deprived of "life, liberty or property" nor "equal protection of the laws". As stated before, the Virginia Implied Consent Law, § 18.1-55.1 of the 1950 Code of Virginia as amended does not provide for imprisonment, does not provide for fine and does not provide that a person shall be deprived of his property; nor is it conceivable that under this Statute one could be denied "equal protection of the laws" as this law applies to all without discrimination and is equal in its administration.

CONCLUSION

The petitioner has not shown a case wherein there is jurisdiction in the Supreme Court of the United States in that the petitioner has relied on the violation of a constitutional guarantee, yet has been unable to show to this Honorable Court wherein he has been denied any rights guaranteed by the Constitution of the United States or the Amendments thereto.

ARGUMENT

III

Petitioner has alleged he was not given an opportunity to contact counsel when he was arrested; however, it is clearly shown by the transcript of testimony taken in the trial of this matter at pages 4 and 5 of the transcript that the petitioner was given an opportunity to contact counsel of his choosing and I quote for the Court's consideration the following testimony: (Transcript page 4)

(By Mr. Barbour) "Q. Well let me direct your attention to your testimony in the Mayor's–excuse me, the Police Justice's Court, in Vinton, at the first hearing in this case. Did you not then and there testify that Mr. Hale requested to speak to me on the telephone?

(By Officer Greenway) A. This was what took place on that. Mr. Hale, after he was arrested and brought back to the police station, he–ah–during the biggest part of the time he was passed out on me, and then, after the warrants were served on Mr. Hale for driving under the influence and wreckless driving, ah–I told Mr. Hale–*he had already requested the blood test*, and I told him that I had already called the Roanoke Memorial Hospital and they was expecting us out there, and as soon as we got back from the hospital, he could use the phone to call whoever he so desired. *At this time he made a statement that he would rot in the damn jail before he used the damn phone so anybody could get him out.* (Emphasis supplied).

(By Mr. Barbour) Q. You state then before this Court that at no time did he make a specific request to call me on the telephone before he was removed from the police station to go to the hospital for the blood test?

(By Officer Greenway) A. No, sir, he never did make a request like that."

And again at page 8 of the transcript in reply to a question by the Court, petitioner answers as follows:

"THE COURT: Did you in any wise refuse to take the blood test or did you agree to take it?

A. No, sir. I agreed to take it."

Petitioner further alleges that the witness for the petitioner, one Richard Lawrence, substantiates this contention of the petitioner in that his testimony was not rebutted; however, I respectfully direct the Court's attention to the answer of said witness at page 23 of the transcript:

(By Mr. Barbour) "Q. Tell us, if you will, whatever testimony, if any, made by Officer Greenway concerning the defendant's request, if any, for consultation with an attorney—consultation with Counsel.

(By Mr. Lawrence) A. *Well, now, as I recall this, I didn't make any notes, and this was a long time ago,* and I have had a number of other cases in Court every day for the City of Roanoke. I do recall though something that you asked Officer Greenway: did he ask—after he had been taken to the jail in Vinton—did he ask—did he—was he advised that he could have a lawyer, or did he ask to be allowed to call a lawyer, something to that effect." (Emphasis supplied.)

As the Court will surely note, this was a most indecisive answer and it was left to the jury to weigh whether or not the witness, Lawrence, recalled the happenings as Counsel for the petitioner insisted he did; and again at page 25 of the transcript of the testimony in answer to a question from the Town Attorney representing the Town of Vinton in this matter, the witness, Lawrence, answered as follows:

"Q. So it's possible that you may not have it on exact recall—every word—that was said?

A. I don't have an exact recall."

Again at page 27 of the transcript, in answer to a question by the Court, the witness, Lawrence, answered as follows:

"THE COURT: If you remember anything, go ahead and say it.

A. Judge, I don't recall whether or not officer Greenway explained all of his rights or any of his rights, or anything like that. The thing I do recall was something was said by this man about a lawyer."

All of this recitation of previous testimony in the case merely goes to show that the witness, Lawrence, readily admitted that he did not have a good recollection as to whether or not Officer Greenway had stated that the petitioner herein was not given the right to consult counsel; however, Officer Greenway in this testimony as cited heretofore specifically sets out that the petitioner was given an opportunity to consult with counsel and refused to do so until later in the day when he, the petitioner, Roy Seth Hale, employed an attorney of his own choosing, and as to the point of whether or not the petitioner sought legal advice before determining whether or not he would submit to a test under the Virginia Implied Consent Law, § 18.1-55.1 of the 1950 Code of Virginia as amended (Appendix A-2), there certainly can be no better evidence than the petitioner's own testimony at page 31 of the transcript.

(By Petitioner) "A. Well, after we got to the police station in Vinton, he asked me did I want to take the blood test, and I told him I agreed to take it—

(By Mr. Barbour) Q. Told him what? What did you tell him?

(By Petitioner) A. I told him I agreed to take the blood test."

And again in answer to a question put to him by the Court at page 34 of the transcript:

(By the Court) "Q. Did you tell the officer you wanted an attorney before you took it, or did you agree to go ahead and take the blood test?

(By the Petitioner) A. I agreed to go ahead and take the blood test, yes, sir.

(By the Court) A. And were you permitted later to call an attorney?

(By Petitioner) A. I called one on Saturday morning because it was so late I didn't want to bother him during the night, and I just waited until Saturday morning, and he come down and got me out.

(By the Court) Q. But that was because you thought it best to wait yourself?

(By Petitioner) A. Yes, sir."

It is respectfully submitted that the petitioner had the opportunity to consult with counsel and refused to do so as shown by his own testimony and further that as soon as the petitioner requested to consult with counsel, he not only was given the opportunity, but in fact, did consult with counsel and was, in fact, represented by counsel.

CONCLUSION

It is respectfully submitted to this Honorable Court that no case of Federal jurisdiction has been made out in the petition for writ of certiorari in that no constitutional right has been violated. It is further submitted to this Court in answer to the petition for writ of certiorari that the petitioner was represented by counsel of his own choosing after having been given the opportunity earlier to consult with counsel and having refused said opportunity; that the petitioner has not been denied due process of law nor has he been deprived of any constitutional rights.

PRAYER

Accordingly, the Town of Vinton prays that this writ of certiorari be denied and that the ruling of the Virginia Supreme Court and the Circuit Court of the County of Roanoke, Virginia, be affirmed.

Respectfully submitted,

TOWN OF VINTON, VIRGINIA

By Richard S. Tilley
Counsel

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Vinton, Virginia
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Respondent in Error

PROOF OF SERVICE

I, John K. Brewer, Office Manager of Thiel Press, Printer of the foregoing Brief for Respondent in Opposition to the Petition for Writ of Certiorari, depose and say that on the 13th day of November, 1967, said brief was served in accordance with Rule 33 of the Rules of the Supreme Court of the United States, by mailing copies of it, with first class postage prepaid, to the following counsel of record:

Stuart A. Barbour, Jr., Esq., Attorney for Roy Seth Hale, 418 Second Street, S. W. Roanoke, Virginia 24011.

_____

John K. Brewer

Subscribed and sworn to before me at Washington, D.C., this 13th day of November, 1967.

_____

Notary Public

My commission expires: _____

APPENDIX A-1

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 19th day of April, 1967.

The petition of Roy Seth Hale for a writ of error and supersedeas to a judgment rendered by the Circuit Court of Roanoke County on the 9th day of November, 1966, in a prosecution by the Town of Vinton against the said petitioner for a misdemeanor, having been maturely considered and a transcript of the record of the judgment aforesaid seen and inspected, the court being of opinion that the said judgment is plainly right, doth reject said petition and refuse said writ of error and supersedeas, the effect of which is to affirm the judgment of the said circuit court.

A Copy,

Teste:

H. Turner, Clerk

APPENDIX A-2

DRIVING AUTOMOBILES, ETC., WHILE INTOXICATED

§ 18.1-55.1. Use of chemical test to determine alcohol in blood; procedure; qualifications and liability of person withdrawing blood; costs; evidence; suspension of license for refusal to submit to test; localities authorized to adopt parallel provisions.

(a) As used in this section "license" means any operator's, chauffeur's or learner's permit or license authorizing the operation of a motor vehicle upon the highways.

(b) Any person whether licensed by Virginia or not, who operates a motor vehicle upon a public highway in this State on and after July one, nineteen hundred sixty-four, shall be deemed thereby, as a condition of such operation, to have consented to have a sample of his blood taken for a chemical test to determine the alcoholic content thereof, if such person is arrested for a violation of § 18.1-54 or of a similar ordinance of any county, city or town within two hours of the alleged offense.

(c) If a person after being arrested for a violation of § 18.1-54 or of a similar ordinance of any county, city or town and after having been advised by the arresting officer that a person who operates a motor vehicle upon a public highway in this State shall be deemed thereby, as a condition of such operation, to have consented to have a sample of his blood taken for a chemical test to determine the alcoholic content thereof, and that the unreasonable refusal to do so constitutes grounds for the revocation of the privilege of operating a motor vehicle upon the highways of this State, then refuses to permit the taking of a sample of his blood for such tests, the arresting officer shall take the person arrested before a committing magistrate and if he does again so refuse after having been further advised by such magistrate of the law requiring a blood test to be taken and the penalty for refusal, and so declares again his refusal in writing upon a form provided by the Chief Medical Exam-

iner of Virginia (hereinafter referred to as Chief Medical Examiner), or refuses or fails to so declare in writing and such fact is certified as prescribed in paragraph (j), then no blood sample shall be taken even though he may thereafter request same.

(d) Only a physician, registered professional nurse, graduate laboratory technician or a technician or nurse designated by order of a court of record acting upon the recommendation of a licensed physician, using soap and water to cleanse the part of the body from which the blood is taken and using instruments sterilized by the accepted steam sterilizer or some other sterilizer which will not affect the accuracy of the test, or using chemically clean sterile disposable syringes, shall withdraw blood for the purpose of determining the alcoholic content thereof. No civil liability shall attach to any person authorized to withdraw blood as provided herein as a result of the act of withdrawing blood from any person submitting thereto, provided the blood was withdrawn according to recognized medical procedures; and provided further that the foregoing shall not relieve any such person from liability for negligence in the withdrawing of any blood sample.

(d1) Portions of the blood sample so withdrawn shall be placed in each of two vials provided by the Chief Medical Examiner, which vials shall be sealed and labeled by the person taking the sample or at his direction, showing on each the name of the accused, the name of the person taking the blood sample, and the date and time the blood sample was taken. The vials shall be placed in two containers provided by the Chief Medical Examiner, which containers shall be sealed so as not to allow tampering with the contents. The arresting or accompanying officer shall take possession of the two containers holding the vials as soon as the vials are placed in such containers and sealed, and shall transport or mail one of the vials forthwith to the Chief Medical Examiner. The officer taking possession of the other container (hereinafter referred to as second container) shall, immedi-

ately after taking possession of said second container give to the accused a form provided by the Chief Medical Examiner which shall set forth the procedure to obtain an independent analysis of the blood in the second container, and a list of those laboratories and their addresses, approved by the State Health Commissioner; such form shall contain a space for the accused or his counsel to direct the officer possessing such second container to forward that container to such approved laboratory for analysis, if desired. The officer having the second container, after delivery of the form referred to in the preceding sentence (unless at that time directed by the accused in writing on such form to forward the second container to an approved laboratory of the accused's choice, in which event the officer shall do so) shall deliver said second container to the chief police officer of the county, city or town in which the case will be heard, and the chief police officer who receives the same shall keep it in his possession for a period of seventy-two (72) hours, during which time the accused or his counsel may, in writing, on the form provided hereinabove, direct the chief police officer having possession of the second container to mail it to the laboratory of the accused's choice chosen from the approved list. As used in this section, the term "chief police officer" shall mean the sheriff in any county having a chief of police, the chief of police of any county having a chief of police, the chief of police of the city or the sergeant or chief of police of the town in which the charge will be heard.

(d2) The testing of the contents of the second container shall be made in the same manner as hereafter set forth concerning the procedure to be followed by the Chief Medical Examiner, and all procedures established herein for transmittal, testing and admission of the result in the trial of the case shall be the same as for the sample sent to the Chief Medical Examiner.

(d3) A fee not to exceed $15.00 shall be allowed the approved laboratory for making the analysis of the second blood sample which fee shall be paid out of the appropria-

tion for criminal charges. If the person whose blood sample was withdrawn is subsequently convicted for violation of § 18.1-54, or of a similar ordinance of any county, city or town, the fee charged by the laboratory for testing the blood sample shall be taxed as part of the costs of the criminal case and shall be paid into the general fund of the State treasury.

(d4) If the chief police officer having possession of the second container is not directed as herein provided to mail it within seventy-two (72) hours after receiving said container then said officer shall destroy same.

(e) Upon receipt of the blood sample forwarded to his office for analysis, the Chief Medical Examiner shall cause it to be examined for alcoholic content and he or an Assistant Chief Medical Examiner shall execute a certificate which shall indicate the name of the accused, the date, time and by whom the blood sample was received and examined, a statement that the container seal had not been broken or otherwise tampered with, a statement that the container was one provided by the Chief Medical Examiner and a statement of the alcoholic content of the sample. The certificate attached to the vial from which the blood sample examined was taken shall be returned to the Clerk of the Court in which the charge will be heard. The certificate attached to the container forwarded on behalf of the accused shall also be returned to the clerk of the court in which the charge will be heard, and such certificate shall be admissible in evidence when attested by the pathologist or by the supervisor of the laboratory approved by the State Health Commissioner.

(f) When any blood sample taken in accordance with the provisions of this section is forwarded for analysis to the office of the Chief Medical Examiner, a report of the results of such analysis shall be made and filed in that office. Upon proper identification of the vial into which the blood sample was placed, the certificate as provided for in this section shall, when duly attested by the Chief Medical Examiner,

or any Assistant Chief Medical Examiner, be admissible in any court, in any criminal proceeding, as evidence of the facts therein stated and of the results of such analysis.

(g) Upon the request of the person whose blood sample was taken for a chemical test to determine the alcoholic content thereof, the results of such test or tests shall be made available to him.

(h) A fee not exceeding five dollars shall be allowed the person withdrawing a blood sample in accordance with this section, which fee shall be paid out of the appropriation for criminal charges. If the person whose blood sample was withdrawn is subsequently convicted for violation of § 18.1-54 or of a similar ordinance of any county, city or town, the amount charged by the person withdrawing the sample shall be taxed as part of the costs of the criminal case and shall be paid into the general fund of the State treasury.

(i) If any trial for a violation of § 18.1-54 of the Code or of a similar ordinance of any county, city or town, this section shall not otherwise limit the introduction of any relevant evidence bearing upon any question at issue before the court, and the court shall, regardless of the result of the blood test or tests, if any, consider such other relevant evidence of the condition of the accused as shall be admissible in evidence. The failure of an accused to permit a sample of his blood to be withdrawn for a chemical test to determine the alcoholic content thereof is not evidence and shall not be subject to comment at the trial of the case; nor shall the fact that a blood test had been offered the accused be evidence or the subject of comment.

(j) The form referred to in paragraph (c) shall contain a brief statement of the law requiring the taking of a blood sample and the penalty for refusal, a declaration of refusal and lines for the signature of the person from whom the blood sample is sought, the date and the signature of a witness to the signing. If such person refuses or fails to execute such declaration, the committing justice, clerk or assistant clerk shall certify such fact, and that the committing justice,

clerk or assistant clerk advised the person arrested that such refusal or failure, if found to be unreasonable, constitutes grounds for the revocation of such person's license to drive. The committing or issuing justice, clerk or assistant clerk shall forthwith issue a warrant charging the person refusing to take the test to determine the alcoholic content of his blood, with violation of this section. The warrant shall be executed in the same manner as criminal warrants.

(k) The executed declaration of refusal or the certificate of the committing justice, as the case may be, shall be attached to the warrant and shall be forwarded by the committing justice, clerk or assistant clerk to the court in which the offense of driving under the influence of intoxicants shall be tried.

(l) When the court receives the declaration of refusal or certificate referred to in paragraph (k) together with the warrant charging the defendant with refusing to submit to having a sample of his blood taken for the determination of the alcoholic content thereof, the court shall fix a date for the trial of said warrant, at such time as the court shall designate, but subsequent to the defendant's criminal trial for driving under the influence of intoxicants.

(m) The declaration of refusal or certificate under paragraph (k), as the case may be, shall be prima facie evidence that the defendant refused to submit to the taking of a sample of his blood to determine the alcoholic content thereof as provided hereinabove. However, this shall not be deemed to prohibit the defendant from introducing on his behalf evidence of the basis for his refusal to submit to the taking of a sample of his blood to determine the alcoholic content thereof. The court shall determine the reasonableness of such refusal.

(n) If the court shall find the defendant guilty as charged in the warrant, the court shall suspend the defendant's license for a period of 90 days for a first offense and for six months for a second or subsequent offense or refusal within one year of the first or other such refusals; the time shall be

computed as follows: The date of the first offense and the date of the second or subsequent offense.

(o) The court shall forward the defendant's license to the Commissioner of the Division of Motor Vehicles of Virginia as in other cases of similar nature for suspension of license unless, however, the defendant shall appeal his conviction in which case the court shall return the license to the defendant upon his appeal being perfected.

(p) The procedure for appeal and trial shall be the same as provided by law for misdemeanors.

(q) No person arrested for a violation of § 18.1-54 or a similar ordinance of any county, city or town shall be required to execute in favor of any person or corporation a waiver or release of liability in connection with the withdrawal of blood and as a condition precedent to the withdrawal of blood as provided for herein.

(r) The court or the jury trying the case shall determine the innocence or the guilt of the defendant from all the evidence concerning his condition at the time of the alleged offense.

(s) The steps herein set forth relating to the taking, handling, identification, and disposition of blood samples are procedural in nature and not substantive. Substantial compliance therewith shall be deemed to be sufficient. Failure to comply with any one or more of such steps or portions thereof, or a variance in the results of the two blood tests shall not of itself be grounds for finding the defendant not guilty, but shall go to the weight of the evidence and shall be considered as set forth above with all the evidence in the case, provided that the defendant shall have the right to introduce evidence on his own behalf to show noncompliance with the aforesaid procedure or any part thereof, and that as a result his rights were prejudiced.

(t) The governing bodies of the several counties, cities and towns are authorized to adopt ordinances paralleling the provisions of (a) through (s) of this section.